MALAYAN UNION REPORTS.

YEO PECK CHIE v. K. S. GILL & CO.

[Orig. Civil Jurisdiction (Willan, C.J.) Sept. 27, 1946]

Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, Section 3 — Action of ejectment from premises held under tenancy agreement executed during the Japanese occupation — Whether such an action is one concerning a dealing in land — Interpretation of Statutes.

The plaintiff was the tenant of the whole of premises at 136 Batu Road, Kuala Lumpur, the ground floor of which he sublet to the defendant firm by an agreement executed on the 1st of June 1942, during the Japanese occupation. The agreement was originally a lease for a year but was renewed from time to time. At the date of the liberation of Kuala Lumpur by the British Forces in September 1945, the defendant firm still remained in occupation of the ground floor of the premises as sub-tenant of the plaintiff. On the 10th of December 1945, the plaintiff during the continuance in force of the agreement, gave the defendant firm notice to quit the ground floor of the said premises. The defendant firm did not comply with that notice and on the 1st of August 1946, the plaintiff filed an action asking for ejectment and for rent in the interim. On the 7th of September 1946, the defendant firm applied for the plaint to be struck out on the ground that it disclosed no cause of action triable by the Supreme Court having regard to the provisions of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946.

Held, (1) that in hearing and determining this Suit the Court could not help but examine the terms of the tenancy agreement to see whether the plaintiff's notice to quit was in accordance with his rights of termination contained therein; and that such tenancy agreement was a "dealing in land" within the meaning of the Courts (Restriction of Civil Jurisdiction) Ordinance 1946; and

(2) that the Court had therefore no jurisdiction to hear and determine the claim as otherwise it would be hearing and determining a suit "with reference to" or "regarding" or "pertaining to", and therefore "concerning" a "dealing in land" which took place within the prohibited period that is, from the 7th day of December 1941 to the 30th day of September 1945.

The Court also held that in interpreting the provisions of the Ordinance, full effect must be given to the literal meaning of the words. The Court must bear in mind that it is only by express words or by clear implication that the jurisdiction of the Courts can be ousted and the rights of persons taken away or postponed.

Cases referred to :—

(1) *Abbott v. Middleton* (1858) 7 H.L.C. 114.

(2) *Biffin v. Yorke* 5 Man & G. 428.

(3) *May v. The Great Western Railway Co.* 41 L.J. Q.B. 104.

E. A. S. Wagner for the plaintiff.

R. Ramani for the defendant.

The facts and arguments sufficiently appear from the judgment.

Willan C.J. :—The plaintiff, who is a furniture dealer carrying on business under the trade name of Nam Lee & Co., is the tenant of the whole of the premises situated at 136, Batu Road, Kuala Lumpur, the ground-floor of which he sub-let to the defendant firm by an agreement executed on the 1st day of June, 1942, during the Japanese occupation.

That agreement is as follows :—

Nam Lee & Company.

Joinery shops:—
87, Campbell Road,
136, Batu Road.

227, Batu Road,
Kuala Lumpur, 1st June, 2602
(1942).

THIS AGREEMENT made on the 1st day of June 2602 (1942) between Messrs. Nam Lee & Co., of 227, Batu Road, Kuala Lumpur (hereinafter called "the first-tenant") of the premises at No. 136, Batu Road, Kuala Lumpur of the first part DO HEREBY SUB-LET THE GROUND FLOOR TO Messrs. K. S. Gill & Co., (hereinafter called "the sub-tenant" of the second part).

WHEREBY IT IS HEREBY AGREED AS FOLLOWS:—

(1) The first-tenant—known as Messrs. Nam Lee & Co., will sub-let the ground floor to the sub-tenant—known as Messrs. K. S. Gill & Co., on receipt of one month's Deposite of $50 (dollars fifty only). All rents are to be paid in advance and payment should be made on or before the 3rd., of each calendar month. (This lease is for a period of one year).

(2) It was understood by both parties the said premises Owner's subsequently increased the rents from the first-tenant and then the first-tenant will have all the rights to increase the rents (or differents) from the sub-tenant.

(3) The first-tenant will have all the rights to cease this transaction (sub-let) the said ground floor by giving the sub-tenant—Two months notice (60 days) in writing. Should the sub-tenant desire to leave the premises they must give the first-tenant—Two Months Notice (60 days) in writing.

(4) It was understood and agreed by both parties that the Sanitary Board Bills for Water and Lights will be paid half by the first-tenant and the other half by the sub-tenant, within three days on receipt of the bills.

Signature of the sub-tenant,
Sd: K. S. Gill,
Man. Prop.

(stamp)

We agreed to the renewal of this agreement.
Sd: K. S. Gill.

Signature of the first-tenant.
Nam Lee & Co.,
Sd: ?
Manager.

Signature of the first-tenant.

Signature of the sub-tenant.
Sd: ? Manager.

Dated this 23rd day of August, 2603.

We agree to the renewal of this agreement as mentioned over-leaf.

Signature of the First-tenant.
Nam Lee & Co., Sd: ? Manager.

Signature of the sub-tenant.
Sd: K. S. Gill. (Stamp).

Dated this 23rd day of August, 2604.

We agree to the renewal of this agreement as mentioned over-leaf.

Signature of the First-tenant.
Nam Lee & Co., Sd: ? Manager.

Signature of the sub-tenant.
Sd: K. S. Gill. (Stamp).

Dated this 25th day of August, 2605.

That agreement which was originally a lease for a year due to expire on the 31st day of May, 1943, was renewed in 1943, 1944 and finally in 1945. One would have expected each of these renewals to have been executed before the 31st day of May in each year instead of in the month of August as per the endorsements on the agreement. I assume, however, that the cumulative effect of these renewals is that the agreement was renewed up to and including the 31st day of May, 1946.

At the date of the liberation of Kuala Lumpur by the British Forces in September, 1945, the defendant firm still remained in occupation of the ground-floor of the said premises, as sub-tenant of the plaintiff, paying a monthly rental of $65. The original rental stipulated in the agreement was $50 per month, but this was raised to $65 per month on some date not specified. I deal later in this judgment with the question of currency in connection with the payment of this rent.

On the 10th day of December, 1945, the plaintiff, during the continuance in force of this agreement, gave the defendant firm notice to quit the ground-floor of the said premises. That notice was in the following form :—

123, High Street (1st floor),
Kuala Lumpur, 10th Dec., 1945.

Messrs. K. S. Gill & Co.,
136, Batu Road, Kuala Lumpur.

Dear Sirs,

With reference to the agreement dated the 1st June, 1942 made between Messrs. Nam Lee & Co., of the one part and yourselves of the other, for the sub-tenancy of the ground-floor of premises 136, Batu Road of which Messrs. Nam Lee & Co., my clients, are the tenants, I am instructed by them as your immediate landlords to require you to quit the said ground floor and to deliver vacant possession thereof to them on or before the last day of February 1946. You are required also to pay to them on or before the 3rd day of March 1946 all arrears of rent, if any, which may then be due by you.

Yours faithfully,
Sd: E. A. S. Wagner.
Advocate & Solicitor.

The defendant firm did not comply with that notice and so, on the 1st day of August, 1946, the plaintiff filed an action in the Supreme Court at Kuala Lumpur, seeking judgment in the following terms :—

(a) an order of ejectment of the defendant firm and of all persons holding by through or under them from the said ground floor of the said premises within three days of judgment.

(b) rent at the rate of $65 per mensem from the last day of June 1946 to date of vacant delivery.

(c) Costs of suit.

On the 7th day of September, 1946, the defendant firm applied for the plaint to be struck out on the ground that it discloses no cause of action triable by the Supreme Court having regard to the provisions of the Courts [Restriction of Civil Jurisdiction] Ordinance, 1946. Section 3 of that Ordinance is as follows :—

Notwithstanding the provisions of the Courts Ordinance, 1946, no Court constituted thereunder shall, during the continuance in force of this Ordinance, have jurisdiction to hear and determine any suit, action or other proceeding whatever—

(a) barred by the provisions of the Moratorium Proclamation; or

(b) for the recovery of rent of land which fell due during the period from the 7th day of December, 1941, to the 30th day of September, 1945; or

(c) relating to land, wherein the cause of action arose during the said period; or

(d) concerning any dealing in land which took place during the said period; or

(e) in which any question or matter relating to or involving Japanese currency or any currency issued by any Japanese authority after the 7th day of December, 1941, arises or falls to be considered.

'land' means land of whatever tenure, tenements and hereditaments corporeal and incorporeal; rights over, and interests in land; houses and other buildings and fixtures attached to the earth; and an undivided share in land;

'dealing' means in relation to land any transaction between parties, of whatever nature by which land is affected or any contract or agreement for such a transaction and includes a caveat;

If the defendant firm can show that the suit comes within the provisions of any one of paragraphs (a) to (e) of section 3, the plaint must be struck out.

The suit does not offend against the Moratorium Proclamation, and therefore paragraph (a) can be ruled out; clearly it does not come within the provisions of paragraph (b); and Mr. Ramani for the defendant firm conceded that it does not come within the provisions of paragraph (c). This leaves paragraphs (d) and (e). I will consider paragraph (e) later, when I come to deal with the claim for rent in the plaint.

Mr. Ramani contended that the provisions of paragraph (d) apply to the claim in the plaint for ejectment, because :—

(i) The agreement of the 1st day of June, 1942, which is the foundation of the tenancy, is a "dealing in land", because "land" includes a house, and the ground floor of this particular house is affected by a "transaction between parties", namely by the agreement of the 1st day of June, 1942.

(ii) That although the cause of action only arose on failure by the defendant firm to comply with the notice to quit, yet such notice, which is an attempt to terminate the tenancy, is founded on a tenancy agreement, which is itself a "dealing in land" and so concerns a "dealing in land".

Mr. Wagner, for the plaintiff, contended that although the agreement of the 1st day of June, 1942, contains a clause that it is a lease for a year, in fact the tenancy is a monthly one because the plaintiff's tenancy from the owner of the premises is on a monthly basis, and accordingly he, the plaintiff, as tenant, could not give the defendant firm, his sub-tenant, a greater tenancy than he, the plaintiff, himself possessed. I would here remark that there is nothing in the pleadings to show that the tenancy of the plaintiff from the owner of the premises is a monthly tenancy but, for the purpose of this judgment, I accept the statement made by plaintiff's counsel.

Mr. Wagner pointed out that the plaint does not make any reference to the agreement of the 1st day of June, 1942, which I have already pointed out still existed when the notice to quit was issued and also that the notice to quit merely makes a passing reference to it. Hence, according to Mr. Wagner, this suit is not concerned with any dealing in land, but is merely the determination of a monthly tenancy, which can be determined at any time.

In reply, Mr. Ramani contended that the parties had contracted on the terms set out in the agreement; that the copy of the notice to quit attached to the plaint recited the agreement; and that the notice to quit was founded on the agreement because the length of notice given was two months, the period stipulated in the agreement, whereas, if the tenancy had been a monthly one, only one month's notice would have been given. Mr. Ramani added that since the parties had contracted on the terms of the agreement, the plaintiff was estopped from repudiating such agreement in order to better his own position.

Clearly, by the wide definition of "dealing" in section 2 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, the agreement of the 1st day of June, 1942, is a "dealing in land" which took place during the prohibited period from the 7th day of December, 1941, to the 30th day of September, 1945. That being so, I think that the crucial question in this case is what meaning should be given to the word "concerning" in paragraph (d) of section 3 of that Ordinance.

In interpreting the provisions of a statute, one of the cardinal rules is to adhere as closely as possible to the literal meaning of the words. If an authority is required for this, it will be found in the case of *Abbott v. Middleton*[1]. Once the literal meaning has been established then, however unjust, arbitrary or inconvenient such meaning may be, it must receive its full effect — see *Biffin v. Yorke*[2]. Nor is it the function of the Court to scan the wisdom or policy of a statute — see *May v. The Great Western Railway Co.*[3].

"Concerning" in its literal sense means "regarding" or "with reference to" or "pertaining to", and in applying paragraph (d) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, to this particular case, that paragraph could be read as follows :—

> regarding (or with reference to or pertaining to) the transaction between Messrs. Nam Lee & Co., (hereinafter called 'the first tenant') and Messrs. K. S. Gill & Co., (hereinafter called 'the sub-tenant') which took place on the 1st day of June, 1942.

Although no reference is made in the plaint itself to the agreement of the 1st day of June, 1942, yet reference is made to it in the notice to quit, a copy of which is annexed to the plaint. I am satisfied that when the plaintiff gave between two and three months' notice to quit, he was guided in so doing by the terms of the agreement which was then still in force and which stipulates that two months' notice of termination by either party is required.

Accordingly I decide against the plaintiff's contention that with reference to that notice to quit the agreement can be ignored.

Having decided that, it follows that in hearing and determining this suit the Court cannot help but examine the terms of the agreement to see whether the plaintiff's notice to quit is in accordance with his rights of termination contained therein. In so doing the Court cannot escape from examining the terms of a document which is a "dealing in land" within the meaning of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946. That being so the Court would be hearing and determining a suit "with reference to" or "regarding" or "pertaining to", and therefore "concerning", a "dealing in land" which took place within the prohibited period.

It is true that in this suit the cause of action arose after the expiration of the prohibited period; but the Court cannot keep in separate and distinct compartments, first the terms of the agreement, and secondly the terms of the notice to quit founded on that agreement, the failure to comply with which gave the plaintiff his cause of action.

It is significant that whereas the test in paragraph (c) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, is the date when the cause of action arose, in paragraph (d) the test is whether the suit concerns any dealing in land which took place during the prohibited period. Once that is established, as it is in this case, paragraph (d) prohibits the Court from hearing and determining the suit.

Accordingly the Court has no jurisdiction to hear and determine the claim set out in paragraph (a) of the plaint in this suit, in view of the provisions of paragraph (d) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946. In coming to this decision I have borne in mind that it is only by express words or by clear implication that the jurisdiction of the Courts can be ousted and the rights of persons taken away or postponed.

As regards the claim for rent at the rate of $65 per month contained in paragraph (b) of the plaint, the question arises whether this claim is barred by paragraph (e) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, because it involves a question relating to Japanese currency.

The agreement of the 1st day of June, 1942, was made during the Japanese occupation, and the rental stipulated therein i.e. $50 per month must be in the currency in circulation at the time, which was Japanese dollars. The claim for rental contained in paragraph (b) of the plaint is made in currency issued by the Board of Commissioners of Currency, Malaya, which is currency usually referred to as "Straits Settlements dollars".

In paragraph 8 of the plaint it is admitted that the defendant is paying, and the plaintiff is receiving, rent at $65 Straits Settlements dollars per month, and therefore paragraph (e) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, need not be considered. Paragraph (b) of the plaint is a claim consequential to the claim in paragraph (a) of the plaint, and since I have ruled that the claim in this latter paragraph is barred, the claim in the former paragraph need not be considered further.

There will be an order on this application that the plaint in this suit be struck out with costs of the application to the applicant on the notice dated the 7th September, 1946.

The plaintiff will be at liberty, if he so desires, to bring a fresh action.

Order Accordingly.

MOHAMED DIN v. SOCKALINGAM CHETTIAR.

[App. Civil Juris. (Evans, J.) September 27, 1946]

Landlord and tenant — Monthly tenancy — What is sufficient notice to terminate a monthly tenancy — Land Code, Section 120 (c) — Civil Procedure Code S. 504.

The appellant in this case was the tenant of certain premises at 172 Main Road, Taiping, of which the respondent was the landlord. The premises were let on an oral agreement for a tenancy from month to month. It was alleged that the appellant had paid no rent after the 1st January 1946 and the respondent brought his action for recovery of balance of rent due and for an order of ejectment. The appellant admitted the arrears and also admitted receiving a two weeks' notice to pay and to quit the premises. The District Judge gave judgment for the rent claimed and made an order for ejectment. The appellant appealed against the order. It was argued on his behalf that the District Court had no power to make the order as the landlord was not entitled to possession until he had put an end to the tenancy by an effective notice to quit and that the proper notice was a month's notice expiring with a month of the tenancy. The respondent contended that the Common Law applicable in such cases had been modified by the provisions of Section 504 of the Civil Procedure Code and by Section 120 (c) of the Land Code, so that where the rent was 15 days and less than 3 months in arrears an adequate notice sufficed to terminate the tenancy and where the rent was more than 3 months in arrears, as in this case, no notice was necessary but the tenancy was determined and the landlord had an immediate right of re-entry.

Held, (1) that Section 120 (c) of the Land Code had no application to verbal contracts;

(2) that Section 504 of the Civil Procedure Code merely provided that where the rent was unpaid for 15 days the notice need not be given to expire on any particular day and had not otherwise altered the Common Law; and

(3) that the length of reasonable notice in the case of monthly tenancies was a month and as insufficient notice had been given in this case, the tenancy had not been terminated and the Judge had no authority to make the order of ejectment.

Case referred to :—

(1) *Precious v. Reedie* (1942) 2 K.B. 149.

M. S. Mahendran for the appellant.

J. S. Chabra for the respondent.